Quarterly Report

of the

ATTORNEY GENERAL

of

ALABAMA

For The Period

From April 1, 1958

Through June 30, 1958

VOLUME 91

JOHN PATTERSON, Attorney General

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QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1958, through June 30, 1958, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

JOHN PATTERSON,
Attorney General.

JOHN PATTERSON
Attorney General

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OPINIONS

April 2, 1958

Hon. W. D. Ritch, Chairman
Marion County Board of Revenue
Hamilton, Alabama

Counties—Courthouses—Funds—Bonds

Surplus in courthouse fund may be invested in cashable United States Government Bonds.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion bearing date of March 28, 1958 is as follows:

"We have on hand an approximate $25,000 in what is known as The Courthouse Fund, which is an accumulation from the gross receipts tax on electric power companies doing business in Marion County, Alabama. This money was provided for by Act Number 190, passed the 1955 session of legislature, page 475, approved July 29, 1955.

"Would you please advise us as early as possible whether or not this money can legally be invested in U. S. Government bonds, thus enabling the county to draw some interest on this fund?"

The general rule is well settled that where trust money cannot be applied either immediately or within a short time to the purpose of the trust, the trustee is authorized and is under a duty to make the fund productive by proper investments—90 C.J.S. 505. This rule was cited by the Alabama Supreme Court in Opinion of the Justices, 244 Ala. 456, 13 So. 2d 559.

Although there is no specific authority for the investment under consideration, it is within sound business practice. In **Taxpayers and Citizens of Shelby County v. Shelby County, et al.**, 246 Ala. 192, 20 So.2d 36, the Alabama Supreme Court upheld purchase of U. S. Bonds by the Board of Revenue of Shelby County saying that investment of money in U. S. Bonds is uniformly regarded as a safe and proper investment. They represent the faith and credit of the United States, the foundation of all money values in this country. See also Quarterly Report of Attorney General, Vol. 49, p. 24 and Quarterly Report of Attorney General, Vol. 87, p. 23. Government bonds when cashable at any time, are for all intents and purposes equivalent to money.

I am of the opinion, therefore, that this money may be invested in

U. S. Savings Bonds provided said investment is in the type of bonds which are cashable at any time.

Very truly yours,

JOHN PATTERSON
Attorney General

April 3, 1958

Hon. Thomas G. Gayle
County Attorney
Dallas County
Selma, Alabama

Counties—Agriculture and Industries.

Counties are authorized to appropriate county funds to the building of a rodeo ground on city property to promote the raising of Show Quarter Horses in the county in furtherance of agriculture.

Opinion by Assistant Attorney General Proctor.

Dear Sir:

Your request for an official opinion bearing date of March 20, 1958, is as follows:

"I would appreciate it if you would advise me whether or not the county could contribute to the building of a rodeo ground on city property. Of course, neither the city or county will manage or run said rodeo, nor will they receive any revenue from the same, and also it will be built on city property."

Additional information provided in your second letter of March 26, 1958, is as follows:

"It is my understanding that the grounds will be used to hold rodeo shows and also shows for quarter horses."

In our conversation of March 27, 1958, you informed me that the raising and showing of Quarter Horses is becoming a growing industry in Dallas County.

Title 12, Section 12, Subsection 22, Code of Alabama 1940, as amended by Act No. 344, General Acts 1945, page 560, provides, in part, as follows:

"To set aside, appropriate and use county funds or revenues for the purpose of developing, advertising and promoting the agricultural, mineral, timber, water, labor and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties. . . ."

This office has previously held that under this authority, county governing bodies may appropriate and expend funds in the furtherance of agriculture for the following matters:

(a) For the purpose of promoting agriculture.—Biennial Report of Attorney General, 1934-36, page 201;

(b) As a donation to a Cattle Show and Fair Association, a nonprofit corporation organized for the purpose of developing the livestock industry in the county.—Quarterly Report of Attorney General, Vol. 51, page 151;

(c) To promote a county-wide agricultural fair.—Quarterly Report of Attorney General, Vol. 9, page 80;

(d) To donate to a livestock barn and youth center.—Quarterly Report of Attorney General, Vol. 53, page 185;

(e) To install and maintain an exhibit of agricultural resources.—Quarterly Report of Attorney General, Vol. 9, page 80.

Whether or not the agricultural industry of Dallas County will substantially benefit from a donation of this type is, of course, a matter which this office cannot determine with the limited facts before us, and it remains within the discretion of the local governing body of Dallas County to make such a determination. However, it is the opinion of this office that the county may contribute to an enterprise such as the building of the rodeo ground if such rodeo ground will be used for activities which will encourage the raising of Quarter Horses or other agricultural industries.

The premises considered, it is my opinion under the facts herein considered, the Dallas County governing body may contribute to the building of a rodeo ground to be used for the showing of Quarter Horses, the raising of which is becoming a growing industry in Dallas County.

Yours very truly,

JOHN PATTERSON
Attorney General

April 9, 1958

Hon. Clayton G. Walker
Tax Collector
Calhoun County
Anniston, Alabama

Taxation—Exemptions—Ad Valorem Taxes—United States—Military and Naval Affairs.

1. Wherry Housing Projects are subject to ad valorem taxes but certain Federal expenditures, or certain expenditures made by the lessee of such property, shall be credited, as an off-set, pursuant to provisions of Section 511, amending Section 408 of the Housing Amendments of 1955, Public Law 1020, 84th Congress, Volume 70, p. 1110; 63 Stat. 570, 12 U.S.C.A., Section 1748, et seq.

2. The statute does not provide for the procedure for ascertaining the manner or method for computing the sum to be apportioned as charges against ad valorem taxes each year; and it would appear that this is an administrative matter to be considered and determined by the Secretary of Defense, or his designee, and the lessee, State, county and municipal tax authorities.

Opinion by Assistant Attorney General Grant.

Dear Sir:

Your request for an official opinion, bearing date of December 13, 1957, is as follows:

"I am enclosing, herewith, letter and tax analysis which I have received from Third Army Headquarters, Fort McPherson, Georgia, regarding tax exemption of the Quintard Terrace Apartments.

"The tax assessment for the tax year 1957 was not made until the 23rd day of September, 1957. In view of this fact, I would appreciate you advising me whether Quintard Terrace Apartments is entitled to the exemption as claimed, and if not what steps I should take towards the collection of the tax."

The enclosure consists of a Consolidated Tax Analysis for the tax year 1957, indicating the sum of $9,420.06 was expended by the Federal Government as affecting operation of Calhoun County government. This analysis further shows $6,869.93 as the total allowable deductions permitted by Public Law 1020, 84th Congress, said deduction to be shown as a credit, or an

off-set against ad valorem taxes accruing on the Quintard Terrace Apartments, Project No. 062-80006, Fort McClellan, Alabama, for the tax year 1957.

We understand that the Quintard Terrace Apartments constitutes what is commonly known as a "Wherry Housing Project," being a military housing project built by a private corporation on land leased for a long period of years from the United States Government, pursuant to provisions of Title VIII of the National Housing Act (Wherry Military Housing Act), 63 Stat. 570, 12 U. S. C. A., Section 1748, et seq.

In an opinion rendered by this office March 5, 1951, addressed to Hon. O. Howard Moore, Tax Assessor of Madison County, Quarterly Report of Attorney General, Vol. 62, page 42, it was ruled that housing projects constructed under provisions of an Act of Congress commonly known and referred to as the "Wherry Act," are not exempt from ad valorem taxation in this State. This contention has since been approved by the Supreme Court of Alabama in the case of **Brookley Manor, Inc. v. State of Alabama,** 90 So. 2d 161; and more recently by the Supreme Court of the United States in the case of **Offutt Housing Co. Inc. v. County of Sarpy and Robert M. Eby, Treasurer of the County of Sarpy, Nebraska,** 351 U. S. 253, 76 S. Ct. 814.

Section 408 of the National Housing Act was amended in 1956 by Section 511, Public Law 1020, 84th Congress, Vol. 70, p. 1110, and is here quoted as follows:

"Sec. 511. Section 408 of the Housing Amendments of 1955 is amended by adding at the end thereof the following: 'Nothing contained in the provisions of Title VIII of the National Housing Act in effect prior to August 11, 1955, or any related provision of law, shall be construed to exempt from State or local taxes or assessments the interest of a lessee from the Federal Government in or with respect to any property covered by a mortgage insured under such provisions of Title VIII: PROVIDED, That, no such taxes or assessments (not paid or encumbering such property or interest prior to June 15, 1956) on the interest or such lessee shall exceed the amount of taxes or assessments on other similar property of similar value, less such amount as the Secretary of Defense or his designee determines to be equal to (1) any payments made by the Federal Government to the local taxing or other public agencies involved with respect to such property, plus (2) such amount as may be appropriate for any expenditures made by the Federal Government or the lessee for the provision or maintenance of streets, sidewalks, curbs, gutters, sewers, lighting, snow removal or any other services or facilities which are customarily provided by the State, county, city, or other local taxing authority with respect to such other similar property: AND PROVIDED FURTHER, That the provisions of this section shall not apply to properties leased pursuant to the provisions of Section 805 of the National Housing Act as amended

on or after August 11, 1955, which properties shall be exempt from State or local taxes or assessments.'" (Emphasis supplied.)

While Section 511, supra, includes an affirmation of the taxability of the lessee of a "Wherry Project," it nevertheless affects the amount of taxes payable by providing for an off-set or credit for amounts expended by the Federal Government, or the lessee, for certain specified purposes.

You have stated that the Quintard Terrace Apartments were not assessed for ad valorem taxes for the tax year 1957 until September 23, 1957, and have asked, in view of this fact, if such property was entitled to the exemption as claimed.

I am of the opinion that "Wherry Housing Projects" are subject to ad valorem taxes, except where they are acquired by the Secretary of Defense; and that the taxes assessed against such properties shall be off-set or credited with Federal payments and/or expenditures made to the local taxing or other public agencies involved with respect to such property, together with "such amount as may be appropriate for any expenditures made by the Federal Government or the lessee for the provision or maintenance of streets, sidewalks, curbs, gutters, sewers, lighting, snow removal or any other services or facilities which are customarily provided by the State, county, city, or other taxing authority with respect to such other similar property; . . ."

Section 511, supra, makes no provisions for the method or manner by which the Federal Government, or the lessee, shall apportion the expenditures and it would appear that this is an administrative matter which is to be considered and determined by the Secretary of Defense, or his designee, the lessee, and taxing authorities of the State, county and interested municipalities.

Very truly yours,

JOHN PATTERSON
Attorney General

April 29, 1958

Hon. T. C. Almon
Judge of Probate
Morgan County
Decatur, Alabama

Time—Judges of Probate.

The office of the Judge of Probate must be operated on Standard Railroad Central Time, otherwise known as Central Standard Time.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of April 19, 1958, is as follows:

"The City of Decatur at a regular meeting of the Mayor and Council have recommended that the city go on daylight saving time.

"The Board of Revenue and Control of Morgan County, Alabama, have recommended that each office in the court house could determine its own office hours.

"In view of Title 13, Section 276 which reads as follows:

"'OFFICE AND OFFICE HOURS—He must keep his office at the courthouse and open for transaction of business on every day, except Sundays and legal holidays, from nine in the morning until four in the afternoon.'

"Will you give me the benefit of your official opinion as to whether or not the Probate Judge's Office could operate on daylight saving time.

"It is my conception of the law that where time is mentioned it means central standard time. If I should close my office at 4:30 daylight saving time, what would be my position if a person brought a mortgage to be recorded and I had closed at 4:30 daylight saving time."

As stated in your inquiry, Title 13, Section 276, Code of Alabama 1940, as amended by Act No. 277, General and Local Acts 1949, page 402 (Title 13, Section 276, 1955 Cumulative Pocket Part, Code of Alabama 1940), in connection with the office of Judge of Probate, provides as follows:

"276. OFFICE AND OFFICE HOURS.—He must keep his office at the Courthouse and open for transaction of business on every day, except Sundays and legal holidays, from nine in the morning until four in the afternoon; but in counties having a population of more than 400,000 inhabitants according to the last Federal census or any subsequent one, he may close his office at 12:00 o'clock noon on Saturdays, and may also close his office on such days or portions of days as the County Commission or other governing body of such county shall authorize or direct the closing of county offices in such county."

In my opinion, the phrase used in the above statute, requiring the office of the Judge of Probate to be open "from nine o'clock in the morning until four o'clock in the afternoon," means nine o'clock in the morning according to Standard Railroad Central Time. The same is true

of the closing time at four o'clock in the afternoon. See Title 1, Section 12, Code of Alabama 1940, as amended by Act No. 668, General and Local Acts 1953, page 926. Quarterly Report of Attorney General, Vol. 19, page 117; letter of the Attorney General under date of April 2, 1958, addressed to Mr. J. E. Spencer, Voting Machine Custodian, Huntsville, Alabama.

You are advised, therefore, that the office of Judge of Probate must observe Standard Railroad Central Time, otherwise known as Central Standard Time.

Yours very truly,

JOHN PATTERSON
Attorney General

May 1, 1958

Hon. Marshall J. Williams
Judge of Probate
Barbour County
Eufaula, Alabama

Poll Tax and Poll Lists—Boards of Registrars—Elections.

1. A person who was forty-five years of age or over on or before October 1, 1956 would owe no poll tax which was due and payable October 1, 1956, nor would such person owe poll tax due and payable October 1, 1957, and, therefore, such person, if otherwise qualified and not disqualified, could register and vote in the May 6, 1958 primary election.

2. Boards of Registrars are prohibited from registering within ten days prior to any primary, special or general election.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of April 14, 1958, is as follows:

"I would like very much to have your opinion on as to where any one who is two years over the poll tax age now, can register and whether under Act 109 of the 1953 Legislature would be qualified to vote in the May 6th Primary."

A person's age in respect to whether or not poll tax is due and payable is October 1 of each year when the tax becomes due and payable. In respect to the coming May 6 primary election, the person's age on

October 1, 1957 and October 1, 1956 is controlling as to whether or not said person is exempt from the poll tax.

If a person was forty-five years of age or over on October 1, 1956, he would owe no poll tax for the two calendar years next preceding within the meaning of that constitutional amendment proposed by Act No. 109, General and Local Acts 1953, page 159, proclaimed ratified December 28, 1953, and such person could register and be eligible to vote in the May primary, if not otherwise disqualified.

I call to your attention, however, that Boards of Registrars are prohibited from registering persons within ten days prior to any primary, special or general election. Act No. 6, General and Local Acts 1950, Fourth Extra Session, page 45.

I am enclosing two copies of opinions of this office found in Quarterly Report of Attorney General, Vol. 73, page 81 and Vol. 83, page 9, which pertain to your inquiry.

Very truly yours,

JOHN PATTERSON
Attorney General

May 13, 1958

Hon. Lee M. Otts
Attorney at Law
218 Belleville Avenue
Brewton, Alabama

Deeds—Highways and Highway Department—Leases—Mines and Mining—Oils—Rights-of-Way.

Ordinarily, where the State acquires property for a highway right-of-way, releases should be obtained from the owners of outstanding mineral, oil and gas deeds and leases.

Opinion by Assistant Attorney General Mentz.

Dear Sir:

Your request for an official opinion bearing date of May 9, 1958, is as follows:

"As your records will show, I have been appointed as Special Assistant Attorney General to handle the legal work in connection with the acquisition of the right-of-way in connection with the above project.

In examining the title to the property involved I find that mineral deeds and oil, gas and mineral leases have been given in several instances. In an ordinary sale, of course, the purchaser would buy subject to these transfers and leases. Has it been the practice in connection with the other projects to purchase the land without being concerned with outstanding mineral interest or oil, gas and mineral leases? I imagine that these outstanding interests have not been considered, however, I wish to make certain that releases need not be obtained from the present holders of such interest.

"I thank you very much for any information you may give me in connection with this matter."

It is my opinion that where the State Highway Department acquires a right-of-way for highway purposes, there should be an accounting for all interests in the land, both on and beneath the surface of such right-of-way. Releases should be obtained from owners of outstanding mineral deeds, and oil, gas and mineral leases unless, of course, such deeds and leases are clearly subject to future conveyances for highway right-of-way purposes.

In an opinion reported in Quarterly Report of Attorney General, Vol. 22, page 92, it was ruled that where the State acquires property for right-of-way purposes, the fee in the land, including minerals, remains in the owner of the abutting property, subject to such easement as the State might have acquired by the act of dedication. It was also stated that while the State claims no right, interest, or title to any mineral situated on the right-of-way, if the owner desires to remove minerals therefrom, the State should insist that its easement be protected from any detriment by the removal of such minerals, and suggested an agreement between the abutting property owner and the Highway Department with regard to the condition in which the right-of-way will be left after the removal of the minerals.

This office has also held that the State Highway Director has authority to grant or deny permits to oil companies desiring to conduct oil exploration, seismograph surveys and other geophysical tests or experiments upon and under the rights-of-way of Alabama highways. However, in the same opinion, it was stated that before such surveys, tests or experiments are conducted on State highway rights-of-way, permission should also be obtained from the owners of mineral rights in the land beneath such rights-of-way, because similar permission granted by the State Highway Department carries no warranty and cannot divest the abutting owners of any rights they may posses. Quarterly Report of Attorney General, Vol. 70, page 62.

In view of the opinions which I have cited, it seems clear that no more

than a nominal sum of money should be paid for the releases about which you have inquired.

Very truly yours,

JOHN PATTERSON
Attorney General

May 16, 1958

Honorable T. E. Farned
Judge of Probate
Franklin County
Russellville, Alabama

Paupers—Counties—Hospitals.

1. The county, with consent of State Department of Pensions and Security, may lease county owned building to individual on terms that poor and needy of county will be cared for in priority to paying patients, the property to be operated as nursing home and the county to receive a percent of gross receipts.

2. Such home can accept paying inmates from Franklin County only.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of May 12, 1958, is as follows:

"A building in the City of Russellville which for several years has been the 'Franklin County Hospital,' privately owned by a group of doctors, was purchased recently by Franklin County for use as a home for poor and indigent persons of the county. The doctors who owned the property are still in possession under the purchase agreement, but are to deliver possession to the county within the next few weeks.
"The Board of Revenue of the county desires to lease this property to an individual, who will be licensed by proper state authority to operate a nursing home. This individual will pay the county as rental a certain per cent of gross receipts, the individual to receive all receipts, pay all operating expenses, etc. This contemplates that the lessee will receive all funds furnished by the Department of Pensions & Security for the care of inmates of the home, and all compensation paid by inmates of the home who may pay for their care. The rent received by the county will be used for maintenance of the building and pay-

ment of principal and interest on warrants issued by the county to obtain funds to buy and renovate the building.

"The Board of Revenue also desires to name an Advisory Board, to serve without compensation, to work with the lessee and supervise the operation of the Home by the Lessee.

"The Board of Revenue requests your official opinion for the following questions:

"1. Is the county in any way prohibited by law from leasing said property to an individual on the basis outlined above, and letting lessee operate the property as a nursing home on a rental basis as outlined above?

"2. If such a lease can be executed by the county legally, could the lessee receive as inmates of the home, people who are able to pay, and will pay for their care, or would the home be limited to inmates who are indigent and dependent on the Department of Pensions & Security?

"3. Can the Board of Revenue appoint the proposed Advisory Board and delegate to it the supervision as outlined above?

"4. Could the lessee accept as inmates in the home, residents of counties other than Franklin?

"I am enclosing herewith copy of order of the Board of Revenue directing the negotiations which led up to the purchase of the property, and pertinent parts of the resolution of the Board authorizing the issuance of warrants to obtain funds to buy the property."

It is provided by Section 88, Constitution of Alabama 1901, that, "It shall be the duty of the legislature to require the several counties of this state to make adequate provision for the maintenance of the poor."

The following was stated in **Moore v. Walker County**, 236 Ala. 688, 185 So. 175:

"From the earliest times it has been recognized that one of the mandatory and imperative duties of a civilized government was to make suitable provision for its needy citizens,—citizens who are unable to provide for themselves. Laws to that end fall squarely within the police power of the state. This state in keeping with all other states of the American Union, has always, with respect to its unfortunate needy, had a most tender regard, and has from time to time made many humane provisions. The legislature has made it a governmental duty

of the several counties to make suitable provision for the support and care of its indigent citizens."

Act No. 694, General and Local Acts 1951, page 1195 and Act No. 703, General and Local Acts 1951, page 1211, set up machinery to obtain benefits for such indigent needy under an act of Congress. Under such plan, the United States furnishes a greater part of the necessary funds. These acts supplement the benefits provided for in Title 44, Code of Alabama 1940. Atkins v. Curtis, 259 Ala. 311, 66 So. 2d 455.

Under Title 44, supra, the governing body of each county has jurisdiction and power necessary and proper for the relief and support of the poor of its county. In making provision for the poor, the governing body is the sole judge of the mode and measure of relief and is not restricted to the confines or instrumentalities of the poorhouse. Henry v. Cohen, 66 Ala. 382. At one time, however, our statutes were so worded that support to the poor was limited to those in the county almshouse. State ex rel. Farnham v. Mims, County Treasurer, 174 Ala 233, 57 So. 466. However, under our laws as they now exist, the governing body is clothed with the broader authority as stated in Henry v. Cohen, supra. and as hereinafter shown.

In addition to certain specific provisions in Title 44, supra, relative to homes for the poor, there is a general provision in Section 18 thereof to the effect that the governing body in any county, with the approval of the Department of Public Welfare, may make "other or further provision for the care of the poor and needy of the county." The Department of Public Welfare is now known as the Department of Pensions and Security.

In view of this broad power, to be exercised for the unfortunate needy, it is my opinion that your first question should be answered in the negative. This answer is based upon the assumption, however, that the lessee will contract and agree to care for the dependent needy of Franklin County, who are entitled to admission as poor and indigent, before accepting persons who pay for their nursing and care; unless, of course, there is adequate room for both. See Quarterly Report of Attorney General, Vol. 18, page 100.

Section 11 of Title 44, supra, provides:

"Persons who are residents of the county or district in which the home is located, who are able to pay for their care, or who have persons, or kindred, bound by law, or otherwise, to maintain them, may be admitted to such homes. Such persons shall pay in advance for care in the home at such reasonable rate as the controlling authorities of the home may determine. But the county dependents must be given preference in case there is not ample provision."

It is my opinion, in answer to your second question, that in accordance with the above section a charge may be made for an inmate's care, but no pay person may be admitted when the accommodations are not sufficient for those who cannot pay. In other words, the county dependents must be given preference.

Your third question is answered in the affirmative. The advisory board is just a part of the plan to properly care for the poor; and, in my opinion, within the authority to make, "other and further provision for the care of the poor and needy in the county."

It is my opinion that your fourth question should be answered in the negative. Since this is not a district home under the provisions of Section 11, supra, pay persons must be residents of Franklin County.

In addition to what has been said above, it is necessary to secure the approval of the Department of Pensions and Security to the proposed arrangement.

Yours very truly,

JOHN PATTERSON
Attorney General

June 5, 1958

Honorable J. B. Davis
Vice Chairman
Houston County Board of Revenue and Control
Dothan, Alabama

Counties—Municipalities—Road and Bridge Fund—Streets—Gasoline Fund.

1. Revenues received by county, under Section 215 of the Constitution of 1901 and the part of the gasoline tax due to the county under Title 51, Section 657, Code of Alabama 1940, as amended, cannot be used for city streets, even though city is composed of one district and synonymous with one beat.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of March 28, 1958, is as follows:

"The 1957 Legislature of the State of Alabama passed Senate Bill 93,

Act No. 9 which was approved May 24, 1957, and said act created and established a Board of Revenue and Control for Houston County, Alabama, to be composed of five district Commissioners and the Judge of Probate. District Five embraces and is composed of Beat 3 which is also synonymous with the boundries of the City of Dothan, Alabama. District 5 set out by this Act which is described as being the City of Dothan, Alabama, contributes over 75% of the gasoline tax levied by Title 51, Section 647. We are in receipt of your opinion dated January 30, 1958, addressed to Honorable B. M. Walton of Butler County, Greenville, Alabama, in which you have rendered an opinion that county funds derived from proceeds authorized by the Constitution of Alabama, 1901, Section 215 and it's share of the gasoline tax levied by Title 51, Section 647, may not be used to construct or maintain streets within a municipality.

"In view of this recent opinion, it appears that district 5 will be unable to receive any county funds to maintain the roads and streets within said district due to the fact that the district lines and the city boundary lines are synonymous. If this is true, the bulk of the tax payers of Houston County, Alabama, will be denied any benefit from the county funds referred to above.

"In view of the peculiar situation of Houston County, and the recent Act which has created district 5, we would appreciate your opinion as to whether or not county funds derived from the proceeds of taxes authorized by the Constitution of Alabama, 1901, Section 215 and it's share of the gasoline tax levied by Title 51, Section 647 of the Code of Alabama, 1940, may be used to construct or maintain streets within district 5 of Houston County, Alabama, even though it embraces the same streets and roads as lie within the municipality. Following this theory further, if a municipality embraced all of any particular county, then no roads within that county could be maintained."

I have examined Act No. 9, General and Local Acts 1957, page 30. This Act does not, in my opinion, place the streets in the City of Dothan, Alabama under the jurisdiction and control of the Board of Revenue and Control for Houston County, Alabama, which was created by said Act. In addition, the Act does not authorize the use of the County's share of the gasoline tax, as provided for in Title 51, Section 657, as last amended by Act No. 44, General and Local Acts 1955, page 73, on the streets of the City of Dothan, Alabama.

Section 657, as amended, supra, provides that the proceeds of a county's share of the above-mentioned gasoline tax shall be used exclusively for the construction, maintenance, supervision and policing of the public roads and bridges in the county. Then later on in said section, certain municipalities are given a portion of the tax and then it is provided that their portion of the tax shall be used for the maintenance, etc., of highways

or streets. It is my opinion, therefore, that the Legislature, in the use of the terms "public roads and bridges in the county" in one place and "streets" in another did not intend "public roads" to include "streets."

It has been the uniform ruling of the Supreme Court of Alabama that taxes levied for road and bridge purposes, under the authority of Section 215, Constitution of Alabama 1901, could not be used on city streets. Town of Clanton vs. Chilton County, 205 Ala. 103, 87 So. 345; Ryan, Treasurer vs. Goodrich and Crinkley, 199 Ala. 642; Wiggins vs. Skeggs, et al., 171 Ala. 492, 54 So. 756. The ordinary use of the term "roads" does not include "streets."

While there is no constitutional objection to the use of the gasoline tax on streets, yet there must be statutory authority for such use. This authority I am unable to find.

It is my opinion that "public roads and bridges," as used in Section 657, as amended, supra, has the same legal significance and meaning as "roads and bridges," as used in Section 215, supra. It follows, therefore, that neither of said funds here pertinent may be used on the streets of Dothan, Alabama.

The fact that District 5 embraces and is composed of Beat 3, which is also synonymous with the boundaries of the City of Dothan, Alabama, does not militate against the conclusion here reached. As above pointed out, Act No. 9, supra, does not even attempt to transfer jurisdiction over the streets of the City of Dothan to the Board of Revenue and Control for Houston County, Alabama. See State, ex rel. City of Mobile v. Board of R. & R. Com., Mobile County, 180 Ala. 489, 61 So. 368. It is, of course, apparent from reading Act No. 9, supra that the Commissioner from District 5 has many other duties to perform and the citizens of Dothan through him have a greater voice in the financial and other interests of the County.

In reaching the above conclusion, I am assuming, of course, that farm to market roads are not under consideration in the use of the gasoline tax. Quarterly Report of Attorney General, Vol. 71, page 17.

Yours very truly,

JOHN PATTERSON
Attorney General

June 5, 1958

Hon. William F. Thetford
Circuit Solicitor
Fifteenth Judicial Circuit of Alabama
County Courthouse
Montgomery 4, Alabama

Gaming and Lotteries—Words and Phrases

1. Free chances on a prize given to purchasers of admission tickets to a fair may constitute such consideration as is required to be a "gift enterprise in the nature of a lottery."

2. Whether free chance, given away at places of business or elsewhere at no cost to recipient, is a "gift enterprise in the nature of a lottery" and violative of Title 14, Section 275, Code of Alabama 1940 is a matter of judicial determination.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion dated April 8, 1958 is as follows:

"The Fair Association proposes to purchase automobiles or other things of value. The Fair Association rents space to approximately one hundred commercial exhibitors inside the arena at the State Coliseum. They propose to distribute a large number of chances on their prizes to these commercial exhibitors with an agreement that the exhibitors will give away, by whatever method they desire, these chances. It will be clearly understood that the chances are not to be sold by anyone. It is further proposed that receptacles to hold these tickets will be placed both inside and outside the Fair premises, commencing on the first day of the Fair. It will not be necessary for anyone to purchase a ticket to the Fair in order to deposit his chance stub or to participate in the drawing. It is further proposed that on one or more nights a chance stub will be drawn and the owner of this stub awarded a prize. It is further proposed that the owner of the chance stub may claim his prize either inside the fairground or outside the fairground within a half hour after the drawing. Under the proposed plan, it would not be necessary for a winner to buy a ticket to the fair in order to deposit his stub or buy a ticket to the fair in order to claim his prize."

The courts of this State have defined a "lottery" or scheme in the nature of a lottery, as a plan in which a prize is set up and awarded by chance, for the right to participate in which a consideration is paid. A lottery has three elements: (1) a prize (2) awarded by chance (3) for a

consideration.—Grimes v. State, 28 Ala. App. 4, 178 So. 69. See also **Grimes v. State**, 235 Ala. 192, 178 So. 73, Quarterly Report of Attorney General, Vol. 49, p. 30.

Under the facts presented there is no question of the existence of the elements of a prize and that it is awarded by chance. The question to be considered is whether or not there is a consideration paid within the spirit and purpose of our lottery laws.

It appears that receptacles to hold these tickets will be placed both inside and outside the Fair premises; that the winner may claim his prize within a half hour of the drawing from either inside or outside the Fair grounds.

The approximately one hundred commercial exhibitors are to receive a large number of chances from the Fair Association and they in turn will give away, free, by any method they desire, these chances.

A "gift enterprise" in the nature of a lottery, as prohibited by statute, includes a lottery in aid of business, through colorable gifts, which are in fact prizes awarded by chance for a prize.

Now, if the free chances are given away inside the arena, and the person buys a ticket to the Fair, the prizes given may be considered an inducement to him to attend the Fair.

Under the above set of facts, I am of the opinion that it would be a "gift enterprise" in the nature of a lottery. The person attending the Fair pays a definite consideration for a chance on a prize. The purpose of the giving away of prizes is to induce more people to come to the Fair, increase the number of paid admissions in order to make the Fair a financial success.

If, on the other hand, free chances are given away at places of business or elsewhere at no cost to the recipient, there may be lacking the consideration necessary to make it a "gift enterprise" in the nature of a lottery.

In **Clark v. State**, 38 Ala. App. 78, 80 So. 2d 308, it was held that where a store operator conducted drawings for merchandise prizes on television programs, and anyone could register for such drawings by mail or at store without making any purchase or payment, the fact that the store operator may have gained or expected to gain some benefit by way of increased sales did not afford the consideration required to make the drawing a lottery. In that case the court held that nothing of value was paid by any of the participants for the chance of winning a prize and the fact that appellant may have gained some benefit or expected to gain some bene-

fit by way of increased sales did not afford the consideration required to constitute a violation of the statute. See also Clark v. State, 262 Ala. 463, 80 So. 2d 312.

However, the ultimate determination of the question presented turns upon the facts involved in each particular situation. Such determination is one that falls within the province of the court or jury when presented in proper forum. It is not a matter upon which this office may conclusively decide.

Yours very truly,

JOHN PATTERSON
Attorney General

June 5, 1958

Hon. L. Charles Wright
Circuit Solicitor
Sixteenth Judicial Circuit of Alabama
Gadsden, Alabama

Gaming and Lotteries—Stamps—License.

1. Sales promotion campaign, sponsored by an advertising agency, which features a movie auction with "movie auction money" being used as bidding consideration, said money being originally issued to local participating business firms and in turn to their customers does not constitute a lottery under the provisions of Title 14, Section 275, Code of Alabama 1940.

2. "Movie auction money," is a trading stamp or substitute therefor under the provisions of Title 51, Section 606, Code of Alabama 1940, as amended by Act No. 399, General Acts 1955, p. 938 and Title 57, Section 114, Code of Alabama 1940.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion bearing date of March 18, 1958 is as follows:

"I will briefly outline the plan, as submitted to me, for your consideration. This plan is submitted by a local advertising agency and is to be sold, or put into effect by local dealers, if deemed legal under the lottery laws of the State of Alabama. Business firms would advertise their products and business on the motion picture screen and would be furnished by the theatre with printed movie auction

money. This auction money would then be issued by the advertising business firms to their customers. These customers would then use the auction money on designated days or nights for the purpose of bidding on merchandise to be auctioned from the stage of the theatre. The auction would be handled in the usual manner of an auction, with no drawings being used, and this so-called movie auction money, with a certain face value, being used as the bidding consideration.

"It would appear that there is a possible connection with two different laws of the State of Alabama. First, whether or not this could be termed a lottery, or in the nature of a lottery under Title 14, Section 275, 1940 Code of Alabama. Second, whether or not such movie auction money would fall under Title 57, Section 114, 1940 Code of Alabama, as a form of trading stamp or substitute therefor, which would require the paying of a privilege or license tax by the business or firm issuing the same."

From the facts presented, it is my opinion that this "movie auction" would not constitute a lottery under the provisions of Title 14, Section 275, Code of Alabama 1940.

"In order to constitute a lottery it is necessary; first, to have a prize offered. In the next place, it is necessary that the person who wins that prize shall be determined by chance. The next thing that is necessary to constitute a lottery is that there should be a consideration paid."

Grimes v. State, 28 Ala. App. 4. See also **Grimes v. State**, 235 Ala. 192, 178 So. 73. For other cases pertaining to lotteries see **State v. Shugart**, 138 Ala. 86 and **Clark v. State**, 80 So. 2d 312, 262 Ala. 462.

"Auction movie" does not have all of the three elements required to constitute a lottery. There is a prize to be the subject of the bidding; there is a consideration in that the businesses receive the benefit of advertising and of the people going to the stores regardless of whether a purchase must be made in the stores prior to the issuance of "auction money." The necessary element of chance is missing in this transaction.

Act No. 399, General Acts 1955, p. 938 (Title 51, Section 606, 1955 Cumulative Pocket Part, Code of Alabama 1940) provides as follows:

"Every person who engages in or carries on the business of issuing or selling to merchants, trading stamps, or any device or substitute therefor, or any stamps or certificates of like character which are to be given by merchants to purchasers of goods, wares or merchandise and which said stamps, certificates or devices, or substitute therefor, the person issuing or selling the same agrees to accept in payment for

goods, wares, and merchandise kept on hand by himself or another for redemption or for distribution by the person issuing or selling such stamps or certificates, shall pay to the state of Alabama a privilege or license tax of one thousand dollars per annum. Provided further that the provisions of this section shall not apply to any coupon, ticket, certificate, card or other similar device issued or distributed by a manufacturer or packer which is redeemable for any goods, wares or merchandise by the manufacturer or packer, or its agents or independent contractor acting for redemption."

Title 57, Section 114, Code of Alabama 1940 provides for the penalty for selling trading stamps without a license as follows:

"Any person, firm, or corporation who engages in or carries on the business of selling or issuing to merchants, trading stamps, or any device or substitute therefor, without first paying the privilege or license tax as required by law, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one thousand dollars."

The "movie auction money" is, in my opinion, such certificates as are acceptable as payment for the merchandise to be auctioned, purchased or redeemed. The auction merely sets the final purchase or redemption prize of each article payable in "auction money." Therefore, the "auction money" is actually a trading stamp or substitute therefor as set out in the above code sections regardless of the name given.

Yours very truly,

JOHN PATTERSON
Attorney General

June 6, 1958

Hon. Claud J. Smithson
Mayor
City of Fairfield
Fairfield, Alabama

Municipalities—Funds—Agriculture and Industries.

1. A municipality may expend its funds to defray its share of the cost of administering a county-wide surplus food program.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of May 26, 1958, is as follows:

"Please advise me as Mayor of the City of Fairfield, Alabama, whether or not the City of Fairfield, in view of Section 94 of the Constitution of the State of Alabama, may appropriate or spend some $1,800.00 under the proposed surplus food program for Jefferson County, Alabama, pursuant to the recommendations of the U. S. Dept. of Agriculture to finance the cost of bringing such commodities into the City of Fairfield for distribution to those qualified to receive same."

Reference is also made to your letter of May 30, 1958, furnishing me with additional information in regard to this matter.

Section 10 of Act No. 703, General and Local Acts 1951, p. 1211, reads in part as follows:

"The governing body in any county or any municipality shall have the power and authority to make other and further provision for the care of the poor and needy of the county or municipality."

I am of the opinion that the above-quoted portion of Section 10 authorizes the City of Fairfield to expend its funds to defray its share of the cost of administering the surplus food program to which your request refers.

The constitutionality of the above-quoted portion of said Section 10 has never been decided by our appellate courts. Constitutional questions may only be decided by the courts. Therefore, it is the policy of this office not to express opinions in regard to such questions.

Very truly yours,

JOHN PATTERSON
Attorney General

June 6, 1958

Hon. Bert E. Thomas
Tax Assessor of Mobile County
Mobile, Alabama

Taxation—Ad Valorem Taxes—Property—Federal Savings and Loan Associations—Financial Institutions.

1. Personal property owned by a Federal Savings and Loan Association operating in Alabama is not exempt from ad valorem taxation.

2. Ad valorem taxes paid by a Federal Savings and Loan Association, for ad valorem taxes on its personal property, does

not constitute a legal deduction from, or credit to, the institution's annual excise tax.

Opinion by Assistant Attorney General Grant.

Dear Sir:

This is to acknowledge receipt of your letter dated February 28, 1958, which is as follows:

"Will you kindly render an official opinion as to whether or not the personal property owned by a Federal Savings and Loan Association is exempt from ad valorem taxation."

I am of the opinion that your question should be answered in the negative.

By provisions contained in Title 12, USCA Section 1464 (h), a Federal Savings and Loan Association is subject to the same ad valorem taxation as that imposed upon similar organizations created by charter under State law. This statute is here quoted in pertinent part as follows:

". . . . and no State, Territorial, Municipal, or local taxing authority shall impose any tax on such Associations or their franchise, capital reserves, surplus, loans, or income greater than that imposed by such authority or other similar local or cooperative thrift and home financing institutions. . . . . " (Emphasis supplied.)

Building and Loan Associations operating in Alabama are deemed to be "financial institutions," and are so defined by statute, Title 51, Section 425, as amended, sub-paragraph (a), Code of Alabama 1940. Pertinent provisions of this Section is quoted as follows:

". . . . 'Financial institution' shall mean and include any person, firm, corporation, and any legal entity whatever doing business in this state as a national banking association, bank, banking association, trust company, industrial or other loan company, building and loan association, and shall like wise include any other institution or person employing moneyed capital coming into competition with the business of national banks, . . . " (Emphasis added.)

Building and Loan Associations chartered by the State of Alabama are thus made "financial institutions" by the express provisions of the statute and are taxed in the same manner as other financial institutions are taxed. Federal Savings and Loan Associations, chartered by Home Loan Bank Board Act (Home Owners Loan Act of 1933) are agencies and instrumentalities of the United States. Title 12, USCA Section 1464; United

States of America v. Fred Harper, 241 F. (2) 103; **Mary A. Elwert v. Pacific First Federal Savings and Loan Association of Tacoma**, 138 F. Supp. 395. In the absence of statute or consent, the State of Alabama cannot succeed in a suit brought against the United States for tax assessments made against it, and such unauthorized assessments would amount to naught. **United States v. State of Alabama**, 313 U. S. 274, 61 S. Ct. 1011.

Title 12, USCA Section 1464, sub-paragraph (I) constitutes a waiver of the United States' immunity so long as Federal Savings and Loan Associations are taxed in amounts no greater than the taxes imposed by the State of Alabama on other similar local or cooperative thrift and home financing institutions. It appears that Federal Savings and Loan Associations may thus be taxed in accordance with tax levies imposed upon similar organizations chartered by the State.

Building and Loan Associations, operating as "financial institutions," are governed by provisions of Chapter 18, Sections 425-431, as amended, Code of Alabama 1940. Section 427, supra, levied an excise tax against such institutions measured by its net income for such taxable year at the rate of six percent of such net income. The purpose of the Act, as announced by our Court in the case of **Union Bank and Trust Company v. S. H. Blan, individually etc.**, 155 So. 612 is:

> ". . . the major purpose of the act was to levy an excise tax for the privilege of engaging in the business of banking in the State of Alabama, and of conducting a financial business employing moneyed capital coming into competition with the business of national banks, so that national banks as well as state banks would be amenable to the law."

Title 51, Section 431, Code of Alabama 1940, provides for exemption from ad valorem taxes on all "moneyed capital" employed in the business. In the case of **Title Guarantee Loan and Trust Company v. Hamilton**, 193 So 107, the question was whether or not the tangible personal property consisting of office furniture, equipment, and abstract books of appellant was exempt from ad valorem taxes, the appellant contending that such property came within the meaning of the words "moneyed capital" employed in the business. The Court denied such contention, holding that the words "moneyed capital" as used in a particular connection had a more limited meaning than the term "personal property," and that the words here used in the statute are properly to be given their restricted meaning.

Section 431, supra, provides also for exemptions from ad valorem taxes of shares of financial institutions, under certain conditions, but expressly excludes real estate owned by financial institutions. The statute makes no reference whatever to "personal property," as such, though it does contain certain provisions affecting any other taxes assessed, and now quoted in pertinent part as follows:

". . . . If any other tax, whether on property (other than ad valorem taxes on real estate), income, business or any element thereof, execpt license taxes not in excess of those heretofore legally levied and in effect, be hereafter levied by this state or by any other political subdivision of this state on any financial institution as in this chapter defined, the amount of such other tax due by such institution shall be credited on account of the tax payable pursuant to the provisions of this chapter." (Emphasis added).

I am of the opinion that personal property owned by financial institutions operating in this State, which includes Federal Savings and Loan Associations, exclusive of "moneyed capital" employed in the business and "shares" of financial institutions, is subject to ad valorem taxes; and that the taxes so paid do not constitute a legal deduction from, or credit to, the institution's annual excise tax. **Title Guarantee Loan and Trust Co. v. State**, 155 So. 305, and **State v. Title Guarantee Loan and Trust Co.**, 155 So. 309. The contrary view expressed in letter from this office dated February 19, 1957, addressed to Dr. J. T. Burch, Tax Assessor of Morgan County, Alabama, is expressly overruled.

Very truly yours,

JOHN PATTERSON
Attorney General

June 10, 1958

Dr. C. B. Smith
President
Troy State College
Troy, Alabama

Schools—Trusts and Trustees—Colleges and Universities.

1. Trust funds held by college for scholarships may be invested other than in Federal Bonds.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of June 3, 1958, is as follows:

"I respectfully request your opinion on the following matter:

"This Institution has some $13,000 in its Gift Scholarship Fund which was donated during the past 40 years by various individuals and or-

ganizations, the interest to be used for gift scholarships to students. All these donors stipulated that scholarships amounting to a return of 8% on the principal were to be awarded each year, that is, $100 per year. "My predecessors initiated the practice of lending these principal funds to students which loans furnished the only income to offset gift scholarships to other students on each unit of $1250. This meant that the College from its general fund paid most of the 8%, since the student paid only 6% after graduation and only a portion of the funds were ever out at one time.

"In the early 1940's we put most of the money in Federal bonds and in 1946 we were granted permission to invest in commercial paper. We soon recouped all the losses experienced by my predecessors during the depression years in lending to students. (See minutes of State Board of Education November 4, 1948)

"In the meantime, the State examiners in their report of June 23, 1949, recorded their opinion that the funds could be invested only in government bonds. Subsequently the money has been invested in government bonds when invested at all.

"Could it be that the law to which examiners called attention was intended to protect from loss funds which are more strictly State funds? Obviously, the private donors expected their gifts of money to earn the amount of the gift scholarships. At the time these gifts began, the rate of interest was 8% in this country.

"The question at issue is: Is it legal for us as trustees of these funds to invest them in such a way as to bring in more nearly the equivalent of the gift scholarship? Do the funds actually come under Sections 93 and 94 of the Constitution or under Amendment 40 of the Constitution? If they do, the long practice of lending students is also illegal."

This office has ruled that in the absence of statutory or constitutional prohibition, the general rule is well settled that where trust money cannot be applied either immediately or within a short time to the purposes of the trust, it is the duty of the trustee to make the fund productive by investment of it in some proper security. Quarterly Report of Attorney General, Vol. 87, page 23.

The principle of that ruling is applicable to the funds in question and the college as trustee is not limited, in my opinion, to investments in government bonds. Quarterly Report of Attorney General, Vol. 76, page 25.

The types of investments which a trustee may make are set forth in Title 58, Section 47, Code of Alabama 1940, as amended by Act No. 763, General and Local Acts 1951, page 1330. See also Title 58, Section 48, Code

of Alabama 1940, as amended by Act No. 133, General Acts 1949, page 163 and Act No. 46, General and Local Acts 1951, page 91. These different code sections and statutes I am sure are readily available to you, and due to their length are not set forth herein. I am sending you, however, copy of the opinion reported in Vol. 76, supra, where some are set forth and discussed.

Yours very truly,

JOHN PATTERSON
Attorney General

June 10, 1958

Honorable W. B. Wise
Tax Assessor
Coffee County
Elba, Alabama

County Boards of Education—City Boards of Education—Schools — Municipalities — Taxation — Opinions overruled, modified or distinguished.

1. Where a municipality has annexed county territory, said territory shall continue to be under the supervision of the county board of education for school purposes until an agreement has been reached concerning existing school indebtedness in said territory between the city board of education, the city commission, and the county board of education (Title 52, Section 83, Code of Alabama 1940).

2. City boards of education may not pay out money for the maintenance or repair of schools which are under the supervision of the county board of education pending the reaching of an agreement by a board of arbitration, as provided for by Title 52, Section 84, Code of Alabama 1940, as amended by Act No. 430, General and Local Acts 1949, page 626.

3. District school taxes assessed in area annexed to city must be paid to the county board of education until an agreement has been reached as provided in Title 52, Section 83, Code of Alabama 1940, or until arbitration has been had pursuant to the provisions of Title 52, Section 84, as amended by Act No. 430, General and Local Acts 1949, page 626, and Title 52, Section 85, Code of Alabama 1940.

4. Opinion reported in Quarterly Report of Attorney General, Vol. 56, page 80, overruled.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of May 20, 1958, is as follows:

"By Act number 665, Regular Session, 1957, the Legislature of Alabama extended the corporate limits of the City of Enterprise, Section 2 of such enactment provides that, 'all farm land annexed by this act, the improvements thereon shall be exempt from all Ad Valorem taxation by the municipality of Enterpirse during the time such property is used for farming purposes.'

"Coffee County is divided into school districts. The corporate limits of the City of Enterprise, as they existed prior to extension constituted a separate school district, when corporate limits of Enterprise were extended, a part of another school district was then incorporated into the City limits of Enterprise. Likewise, prior to the extension of the corporate limits, the district school tax assessed on that area now enclosed by the extended corporate limits were credited to the County school fund. The County school fund is administered by the County Board of Education, City school Board funds are administered by respective City Board of Education.

"Would you please give me your opinion on the following question?

"1. Would the district school taxes now assessed on area recently annexed to the City of Enterprise be credited to the City school fund or to the County school fund?

"2. Would that provision of act 665 exempt agricultural lands from municipal taxation affect this assessment in any way?

"In short, my question is, who gets that district school tax on the area annexed to the corporate limits of the City of Enterprise by act 665, the County school fund or City school fund?"

In an opinion reported in Quarterly Report of Attorney General, Vol. 56, page 80, a similar question was presented to this office, and it was there ruled that the funds in question should be paid to the city board of education. This ruling was made under the provisions of Title 52, Section 273, Code of Alabama 1940, which realtes to cities whose populations have reached twenty-five hundred (2500) or more. This office was dealing with the City of Attalla and the City of Gadsden, both of whom were over twenty-five hundred (2500) at the time. In my opinion, Section 273, supra, was inapplicable to the situation there presented.

The question presented for determination should be governed by Title

52, Section 83, Code of Alabama 1940, and in the event an agreement is not reached, as provided for in that section, between the county and city boards of education, and the city governing body within thirty (30) days after annexation, by the provisions of Title 52, Section 84, Code of Alabama 1940, as amended by Act No. 430, General and Local Acts 1949, page 626, and Section 85, Code of Alabama 1940, then the matter must be submitted to arbitration as provided by Section 84, supra. Those sections provide as follows:

Title 52, Section 83, Code of Alabama 1940.

"Annexing to city territory embracing schools.—When any part of the territory embracing a school under the supervision and control of the county board of education is annexed to a city having a city board of education by extension of the corporate limits of such city, the county board of education shall retain supervision and control of said school and for school purposes shall retain the same control of the territory and revenues which it exercised prior to such annexation, for the purpose of using and devoting said school to the benefit of all children who were or would be entitled to the use and benefit of the school so long as it was a county school, until an agreement has been made between the county board of education and the city board of education, and the city council or commission or other governing body of the city to which the territory was annexed with reference to the matter of existing indebtedness and of providing the same or equivalent school facilities for the children in that part of the territory in the school district or districts not annexed or made a part of such city."

Title 52, Section 84, Code of Alabama 1940, as amended by Act No. 430, General and Local Acts 1949.

"Arbitration.—If such agreement is not reached within thirty days after the annexation, wherever such annexation occurs in any county having a population of less than 400,000 according to the last or any succeeding federal census, or within three years after the annexation, if such annexation occurs in a county having a population of 400,000 or more according to the last or any succeeding federal census, it shall then be mandatory to refer the final disposition of the matter to arbitration by a board consisting of three members, one to be selected by the county board of education, one to be selected by the city board of education, and the third member to be selected by these two members. If the two said members are unable to agree upon the third member of the board of arbitration, the state superintendent of education shall appoint the third member."

Title 52, Section 85, Code of Alabama 1940.

"Hearing by board of arbitration.—The board of arbitration shall secure

all facts available relative to the matter, hold a public hearing for the purpose of giving an opportunity for every contention to be presented by both evidence and argument, and determine all matters relative to the transfer of the control, existing indebtedness, and use of such school. The findings of a majority of said board of arbitration shall be binding on all concerned."

Although your question is in two parts, you state, "In short, my question is, who gets that district school tax on the area annexed to the corporate limits of the City of Enterprise by act 665, the County school fund or City school fund?"

It is my opinion that the funds in question should be paid to the county board of education until an agreement has been reached as provided in Section 83, supra, or until arbitration has been had as provided by the above-quoted Code sections. Quarterly Report of Attorney General, Vol. 69, page 64.

The opinion reported in Quarterly Report of Attorney General, Vol. 56, page 80, is not in accord with the views here expressed and the same is hereby overruled.

Yours very truly,

JOHN PATTERSON
Attorney General

June 12, 1958

Hon. Walter D. Ritch
Chairman
Marion County Board of Revenue
Hamilton, Alabama

Counties—Claims—Fees—Notary Public.

1. All claims against the county must be itemized and sworn to by the claimant or some person in his behalf having personal knowledge of the facts.

2. A county governing body may not pay the fee to which a notary public is entitled for services rendered in connection with a claim against the county.

3. A clerk of a county governing body who is also a notary public may collect a notary fee from the person who verifies a claim against the county.

Opinion by Assistant Attorney Gish.

Dear Sir:

Your request for an official opinion bearing date of May 24, 1958, is as follows:

"Our accounting system for Boards of Revenue and/or Commissioner's Courts, requires a notarized claim to be filed with the Governing body for each bill covering purchases made by such governing body. The person presenting the bill signs such claim and his signature must be notarized in order for the Governing Body to handle the bill.

"In your opinion, would it be legal for the Governing Body to pay such notary fee? The clerk of the Boards of Revenue is usually a notary public and acknowledges many such bills when the vendors present them for the consideration of the board. Would it be legal for remuneration for these acknowledgments to be made to the board clerk?"

The fees to which notaries public are entitled are prescribed by Title 40, Section 14, Code of Alabama 1940.

Title 12, Section 115, Code of Alabama 1940, requires that all claims against a county be itemized and sworn to by the complainant or some person in his behalf having personal knowledge of the facts.

It is usual practice for the notary fee in connection with such a claim to be paid by the claimant or other person who verifies the claim. I find no authority for allowing such a fee to be paid by a county governing body.

Therefore, both your questions are answered in the negative. Cf. Quarterly Report of Attorney General, Vol. 13, p. 94.

This opinion should not be construed as preventing a clerk of a county governing body who is also a notary public from collecting a notary fee from the person who verifies a claim against the county.

Very truly yours,

JOHN PATTERSON
Attorney General

June 16, 1958

Hon. W. M. Wyatt, Mayor
The City of Montevallo
Montevallo, Alabama

Gaming and Lotteries—Words and Phrases.

Whether sales promotion campaign, sponsored by local mer-

chants, which features a weekly "Appreciation Day" at which a prize is awarded by chance is a lottery or "gift enterprise" in the nature of a lottery is a matter for judicial determination.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion, bearing date of June 11, 1958, on the subject of appreciation day whereby a group of local merchants will give treasure chest coupons commensurate with purchases and award a prize to the holder of one of these coupons at the weekly drawing with the understanding that anyone not having a coupon at the time of the drawing may obtain one free and deposit same in the chest is as follows:

The courts of this State have defined a "lottery" or scheme in the nature of a lottery, as a plan in which a prize is set up and awarded by chance, for the right to participate in which a consideration is paid. A lottery has three elements: (1) a prize (2) awarded by chance (3) for a consideration.—Grimes v. State, 28 Ala. App. 4, 178 So. 69. See also Grimes v. State, 235 Ala. 192, 178 So. 73, Quarterly Report of Attorney General, Vol. 49, p. 30.

Under the facts presented there is no question of the elements of a prize and that the prize is to be awarded by chance. The question to be considered is whether or not there is a consideration paid within the spirit and purpose of our lottery laws.

It is noted from "Appreciation Day Rules and Regulations" that coupons will be issued on every sale of twenty-five cents or more when sale is made whether for cash or credit.

A "gift enterprise" in the nature of a lottery, as prohibited by statute, includes a lottery in aid of business through colorable gifts, which are in fact prizes awarded by chance for a price. See Title 14, Section 275, Code of Alabama 1940.

Now, if the chances on prizes are given away with purchases at participating stores, the prizes given may be considered an inducement to the purchaser to patronize the participating store.

Under the above set of facts, I am of the opinion that it would be a "gift enterprise" in the nature of a lottery. The purchaser pays a definite consideration for the article purchased and for a chance on the prize. The purpose of the giving away of prizes is to induce more people to buy at participating stores thereby stimulating business and making the plan a success.

If, on the other hand, free chances are given away at places of business or elsewhere at no cost to the recipient, there may be lacking the consideration necessary to make it a lottery.

It is noted that Rule 18 of Appreciation Day Rules and Regulations provides:

"No consideration of value must be accepted in exchange for a coupon. A coupon should be given upon request to anyone who might ask for it without even making a purchase. At each program, a small jar of punched coupons should be placed upon the stand and the following announcement must be made: 'Anyone who does not have a coupon in the container is invited to take one from this jar, sign his name on the back, and deposit it here and now.' This gives non-patrons an interest in your program at the very beginning. . . ."

In **Clark v. State**, 38 Ala. App. 78, 80 So. 2d 308, it was held that where a store operator conducted drawings for merchandise prizes on television programs, and anyone could register for such drawings by mail or at store without making any purchase or payment, the fact that the store operator may have gained or expected to gain some benefit by way of increased sales did not afford the consideration required to make the drawing a lottery. In that case the court held that nothing of value was paid by any of the participants for the chance of winning a prize and the fact that appellant may have gained some benefit or expected to gain some benefit by way of increased sales did not afford the consideration required to constitute a violation of the statute. See also **Clark v. State**, 262 Ala. 463, 80 So. 2d 312.

However, the ultimate determination of the question presented turns upon the facts involved in each particular situation. Such determination is one that falls within the province of the court or jury when presented in proper forum. It is not a matter upon which this office may conclusively decide.

Yours very truly,

JOHN PATTERSON
Attorney General

June 16, 1958

Honorable John S. Hargis
Superintendent
Autauga County Board of Education
Prattville, Alabama

Schools—Trusts and Trustees—Officers and Offices—Vacancies.

1. Vacancy held to exist in office of school trustee under facts stated.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of June 13, 1958, is as follows:

"In one of our rural school communities we are having a little trouble about the use of the school grounds so we would appreciate very much your giving us an opinion on the following:

"'In 1951 there was appointed 3 Trustees from a list of 6 names submitted from the citizens of that community. According to minutes of the Board these Trustees were appointed for a term of 4 years which would make their term expire in 1955. However, there has not been an election since the one held in 1951. May it be assumed that these men appointed in 1951 will continue to serve and have the authority of school trustees until a new election is held even though they were appointed by the Board for 4 years'."

It is my opinion that your question should be answered in the negative.

Under Title 52, Section 100, Code of Alabama 1940, a trustee has such term as may be fixed by the County Board of Education. Biennial Report of Attorney General 1928-30, pp. 307 and 380. Section 100, supra, as amended by Act No. 310, General and Local Acts 1951, page 605, fixes a term of four years for school trustees. This Act was approved and became effective July 27, 1951. It is immaterial in answer to your inquiry whether the trustees were appointed before or after the effective date of the above amendment. Vacancies now exist and an election should be had under the provisions of Section 100, supra, as amended. Biennial Report of Attorney General 1934-36, page 595.

Yours very truly,

JOHN PATTERSON
Attorney General

June 16, 1958

Honorable John R. Hargis
Superintendent
Autauga County Board of Education
Prattville, Alabama

County Boards of Education—Schools—Property.

1. County board of education has authority to sell real property when no longer needed for school purposes.

2. The terms of the sale are within the discretion of the county board of education.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of June 12, 1958, is as follows:

"We will appreciate very much if you will give us an opinion on the following:

" 'This Board has the title to 110 22/100 acres of land located in this county. This land was purchased in 1954 as a school site but the plans have been changed and it is now for sale. The title to this land was vested in the State of Alabama, but upon request of this Board the State deed the property to the County Board. Can the Board sell this land on time payments getting a substantial down payment and taking a mortgage on the property for the remainder to be paid in annual or monthly installments? If so how long a period can the payments be extended?' "

The Autauga County Board of Education has the authority to sell and convey its property when it is no longer needed for school purposes. Title 52, Section 99, Code of Alabama 1940. It must do so, however, for an adequate consideration and on advantageous terms and to the best interest of education. Good business judgment should be used in making the sale. **Harvey v. Board of Public Instruction of Sarasota County**, 101 Fla. 273, 133 So. 868; **Wurn v. Board of Public Instruction of Duval County**, 73 So. 2d 61 (Fla.).

Corning v. Patton, 236 Ala. 354, 182 So. 39. the Supreme Court said with reference to a lease of county property formerly used as a courthouse:

"Indeed the action of the board, when acting within its authority as to the nature, terms, price, etc., of the lease, is largely within its discretion, and in the absence of fraud, corruption or unfair dealing their action will not be disturbed."

Then in **Terrell v. Marion County**, 250 Ala. 235, 34 So. 2d 160, the court held that the above rule as to leases "is also applicable to a sale of county property."

It is my opinion that the rule would also be applicable by analogy to the proposed sale in question. Your first question is, therefore, answered in the affirmative, and your second by saying that the terms of sale and the length of time over which payments are to be made on the mortgage,

that is its maturity date, are matters for the board to determine acting as aforesaid.

Yours very truly,

JOHN PATTERSON
Attorney General

June 17, 1958

Hon. J. C. Grady
Judge of Probate
Chambers County
Lanett, Alabama

Contracts—Municipalities—Real Estate—Words and Phrases.

1. A purchaser who is in possession of real property under an executory contract of sale, providing that the vendor will execute a deed of conveyance when the purchase price installment payments have been completed, is the "owner" of such real property within the meaning of Title 37, Section 10, Code of Alabama 1940, as amended by Act No. 43, General and Local Act 1955, p. 149.

2. A purchaser who is in possession of real property under an executory contract of sale, providing that the vendor will execute a deed of conveyance when the purchase price installment payments have been completed, is qualified as the owner of such real property to consent to the incorporation of a municipality.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of May 30, 1958, is as follows:

"At the present time in Chambers County, Alabama, there is a move under way to incorporate the towns of Fairfax, Langdale and Shawmut into one city and a petition is being prepared to be presented to this office requesting that an election be called to determine whether this area shall become incorporated or not.

"Title 37, Section 10 of the Code of Alabama 1940, as amended, requires that the consent of persons owning at least sixty percent of the acreage to be included in the incorporation must consent to the calling of an election by signing said petition. In the area in question there are

approximately one thousand individuals who have entered into contracts of sale with the West Point Manufacturing Company wherein these individuals are purchasing the land on which they live. Since these individuals do not own a full fee simple title to their individual lots and since it will probably be impossible to get sixty percent of the area without at least a portion of the lands covered by these contracts my inquiry is as follows: 'In view of Section 10, Title 37 of the Code of Alabama 1940, as amended, is a person qualified to consent to an incorporation on the strength of a contract to purchase real estate or must the owner of the fee simple title give such consent?'

"At the time West Point Manufacturing Company entered into contracts to sell its village properties to the individual employees occupying said property the tax assessor of Chambers County asked for and received an opinion from the Attorney General's office ruling that such a contract did pass sufficient title for the purchaser under such contract to return the property for taxes and to claim a homestead exemption on same. I make this reference for whatever bearing it might have on your opinion. I also enclose herewith a copy of the form contract used in each case wherein West Point Manufacturing Company has contracted to sell a lot to its employees.

"Since this petition will probably be presented at an early date and I will at that time need to rule on whether or not such individual purchasers are qualified to consent for the property involved in their contract I request your immediate attention and official opinion at your earliest convenience."

I am informed that Fairfax, Langdale and Shawmut are unincorporated communities located in Chambers County.

The contract which you have submitted provides for the purchase from the seller of specified real estate at a purchase price payable in weekly installments for a period of five hundred twenty weeks. The purchaser is authorized to take possession as of the date of the contract and he agrees to pay all taxes and assessments against the property. There is provision for the conveyance of the property by deed when the purchase price is paid in full, or the seller may, at its option and before such time, convert the contract into a deed with a purchase money note and mortgage. The contract obviously contemplates that title is to remain in the seller until such time as a deed of conveyance is executed.

Title 37, Section 10, Code of Alabama 1940, as amended by Act No. 43, General and Local Acts 1955, p. 149, reads as follows:

"When the inhabitants of an unincorporated community, which has a population of not less than seventy-five, constituting a body of citizens whose residences are contiguous to and all of which form a homogeneous settlement or community, desire to become organized as a mu-

nicipal corporation, they may apply to the probate judge of the county in which such territory is situated, or the greater portion thereof, if it is situated in two or more counties, for an order of incorporation, by a petition in writing signed by not less than twenty-five qualified electors residing within the limits of the proposed municipality. Such petition shall state the proposed name of such municipality, and shall have attached thereto and as a part thereof an accurate plat of the territory proposed to be embraced within the corporate limits, including all subdivisions into lots, blocks, streets and alleys, within such territory, if any, and an accurate description by metes and bounds of the boundary of such territory. No platted or unplatted territory shall be included within such boundary unless there are at least four qualified electors residing on each quarter of each quarter section, according to government survey or part thereof, of such platted or unplatted land, who assent thereto in writing by signing said petition, together with the consent of the persons, firms or corporations owning at least sixty percent of the acreage of such platted or unplatted lands, such consent to be signified by their signing said petition. Proof of residence and qualifications as electors of petitioners and of persons affected shall be made to the judge of probate, by affidavit or otherwise, as he may direct. When determining the ownership of such lands, the person, firm or corporation assessing the same for taxation shall be accepted by the probate judge as prima facie the owner thereof." (Emphasis supplied.)

The words "owning" and "ownership" have no fixed meaning, but must be interpreted in their context and according to the circumstances in which they are used.

I am of the opinion that, in requiring the consent of the persons, firms or corporations owning at least sixty percent of the acreage to be included within the municipal corporation, Section 10, as amended, supra, means the general and beneficial owners; that is, the persons whose interest is primarily one of possession and enjoyment in contemplation of an ultimate absolute ownership; and not the person whose interest is primarily in the enforcement of a collateral pecuniary claim, and does not contemplate the use or enjoyment of the property as such. Cf. State v. White Furniture Company, 206 Ala. 575, 90 So. 896. The general and beneficial owner is the person who will be most affected by the inclusion of his property within the corporate limits of a municipality.

Therefore, I am of the opnion that the purchasers of realty under a contract such as the one you have submitted are qualified as the owners of such realty to consent to the incorporation of the municipality to which your request refers.

Very truly yours,

JOHN PATTERSON
Attorney General

June 27, 1958

Hon. Bernard A. Reynolds
Judge of Probate
Dallas County
Selma, Alabama

Counties—Health and Health Department.

Under Title 12, Section 12(19), Code of Alabama 1940, county governing bodies are authorized to appropriate funds to engage the services of the American Psychiatric Association of Washington, D. C., to make a study and survey of Bryce Hospital, Searcy State Hospital, and the Partlow State School for Mentally Retarded Children, when requested to do so by State Board of Health.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion bearing date of June 18, 1958, is as follows:

"The Alabama Association for Mental Health, Inc., is planning to engage the services of the professional staff of the American Psychiatric Association of Washington, D. C. to make an intensive study of Bryce and Searcy State Hospitals and Partlow State School for Retarded Children. The proposed study has the full approval of Dr. J. S. Tarwater, Superintendent of State Hospitals.

"This survey will study and evaluate the present operating program of the three institutions. It will recommend new methods and techniques for improving any existing condition and will also submit recommendations based upon its study concerning more adequate financial support to enable these institutions to provide a normal program of care and treatment.

"This survey will be of immediate service and interest to every county in Alabama since every county has patients in Bryce and Searcy State Hospitals and retarded children under custody and training at Partlow State School. The results of the survey will be made available to the three institutions, probate judges, and others concerned with the problem as well as to the Governor and members of the Legislature. It is the considerate judgment of thoughtful people that this survey will constitute a health service to the government and citizens of Alabama, of direct and immediate importance.

"The purpose of this letter is to ask if the various county boards of

revenue have legal power to appropriate (if they so desire) small sums of money ranging from fifty dollars to five hundred dollars to help pay for this service survey. The total cost of the survey for the three institutions named will be six thousand dollars ($6,000.00). The Alabama Association for Mental Health has also contracted with the American Psychiatric Association to do a general survey of all the components of the mental health situation in Alabama. This survey costing ten thousand dollars ($10,000.00) will be financed by private funds and the results will be available to the Governor, the members of the Legislature, all interested agencies and institutions, and county officials. The state mental institutions of forty-five out of the forty-eight states in the Union have had the advantage of the survey proposed for our State Mental Institutions.

"We, therefore, request your ruling regarding the power of the Board of Revenue of Dallas County to make an appropriation to pay for the service which will be rendered this county by this survey."

My answer to your inquiry is in the affirmative, subject to the limitation set out below.

Title 12, Section 12(19), Code of Alabama 1940, reads as follows:

"To appropriate money to promote or enforce the health and quarantine laws of the state for the benefit of the county and its inhabitants, when requested so to do by the state board of health."

The authority granted in the above-quoted code section authorizing counties to appropriate money for the promotion of health laws of the State invest in such governing bodies a wide descretion. It is apparent that the Legislature intended to give county governing bodies authority to expend public funds, in their discretion, for the promotion of public health and did not wish to unduly hamper them by restricted legislation.

The health laws of the State of Alabama are to be found in Title 22, Code of Alabama 1940. Title 22, Section 7(2), reads as follows:

"To investigate the causes, modes of propogation, and means of prevention, of diseases."

It is a matter of common knowledge that mental health is just as vital to the citizens of the State of Alabama as is physical health. It is just as vital to investigate the means of preventing mental diseases as it is to investigate the prevention of physical diseases. This authority in the health laws is, in my opinion, ample authority for the conducting of a study and survey of the mental institutions of this state. This survey will no doubt show ways and means of preventing and treating mental illnesses, and, in my opinion, is within the purview of the health laws set out in

Title 22, Section 7(2), supra. Quarterly Report of Attorney General, Vol. 29, page 114.

You are, therefore, advised that the various counties of the state may appropriate public funds to the Alabama Association for Mental Health, Inc. to help defray the expenses of said association in causing to be made a study and survey of the mental institutions of the State of Alabama. Your attention is called to the fact that under the provisions of Title 12, Section 12 (19), Code of Alabama 1940, that the State Board of Health will have to request this appropriation before the counties are authorized to make such an appropriation.

Yours very truly,

JOHN PATTERSON
Attorney General

June 30, 1958

Hon. Joseph A. Lee
City Attorney
Proctor Building
Scottsboro, Alabama

Census—Municipalities—Opinions Overruled, Modified, or Distinguished.

1. A census taken pursuant to Act. No. 845, General and Local Acts 1953, p. 1136, will not effect a change in the form of a municipal government.

2. The results of a census taken pursuant to Title 37, Section 481, Code of Alabama 1940, may effect a change in the form of a municipal government.

3. Opinion reported in Quarterly Report of Attorney General, Vol. 81, p. 50, overruled, in part.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion under date of June 10, 1958, is as follows:

"I am the City Attorney for the City of Scottsboro, and the Mayor and members of the Council have requested that I obtain an opinion from the Attorney General's office with reference to the time when the change in our form of City government shall take effect.

"At the municipal election held in and for the City of Scottsboro in September, 1956 the Mayor and the Alderman for Place No. 1 were elected for four years terms, and the Aldermen for Places No. 2 through 5, inclusive, were elected for two year terms, in accordance with the provisions of a local act passed by the legislature (Act No. 268, H. 776, approved August 23, 1955). This local act was amended by the 1957 legislature (Act. No. 189, H. 577, approved August 13, 1957). As you will note from reading these two acts, Scottsboro will have an election on September 15, 1958, for the purpose of electing Aldermen for Places No. 2 through 5, inclusive, each of these officers having been elected for a two year term in September, 1956. Each of the members of the governing body of the municipality is elected from the City at large.

"According to the regular federal decennial census of 1950, Scottsboro was a city of less than 6,000 inhabitants. In 1957, however, as a result of a special federal census conducted in Scottsboro, we have a population of more than 6,000. Under the date of June 20, 1957, there was issued by A. Ross Eckler, Acting Director, Bureau of Census, U. S. Dept. of Commerce, Washington, D. C., an official certification that the population of Scottsboro was 6,052 as of June 3, 1957.

"Our Mayor still sits with and presides over the Council at all meetings. The question which we wish to have answered is when we must change our form of City government in compliance with the laws concerning cities of more than 6,000 population. In other words, when must our Mayor stop presiding over Council meetings and voting on questions coming before the Council?

"It is my understanding that if it were not for our local acts, referred to hereinabove, providing for a municipal election in September, 1958, at which election four aldermen will be elected, our Mayor would continue to sit and vote with the Council until after the 1960 City election. Whether it will now be necessary that this change be made after the September, 1958, election, I do not know.

"We will very much appreciate your advising us concerning this matter. If I have overlooked furnishing you with some information which you need before you can favor us with an opinion, please let me know and I will try to provide you with the information you need."

On June 23, 1958, you submitted to this office a copy of the ordinance of the City of Scottsboro providing for the taking of the census to which your request refers. Section 1 of said ordinance provides that said census shall be taken pursuant to the provisions of Act. No. 845, General and Local Acts 1953, p. 1136.

Act No. 845, supra, reads in part as follows:

"Section 1. Any city or town may, by ordinance, provide for a census of all persons residing within the corporate limits of such city or town to be taken by the Bureau of the Census of U. S. Department of Commerce, but no such census may be conducted more often than every five years.

"Section 2. Any census taken under the provisions of this act shall be used only as the basis for any law which provides for the levy or collection of license taxes where such levy or collection of license taxes is based on population, and as the basis for any law which provides for the distribution of state collected or county-collected licenses, excises, revenues, or funds where such distribution is administered or distributed on a population basis. Such census shall be used in administering any such laws as soon as such census is certified by the Bureau of the Census, U. S. Department of Commerce, and proclaimed by the governing body of the city or town providing for the taking of the census. Provided, however, that where a municipality is annexed or otherwise merged with another municipality it shall not be necessary to take a census as provided herein but the population of the municipality to which such other municipality is annexed or merged shall be the combined total of the population of each such municipality according to the last Federal Census and such total population shall be the official census of such city. (Emphasis supplied.)

4. All laws or parts of laws which conflict with this Act are repealed."

The emphasized portion of the statute quoted hereinabove clearly provides that a census taken pursuant to its provisions may be used only for certain purposes. A change in the form of a municipal government is not one of those purposes. Therefore, a census taken under said statute will not effect a change in the form of a municipal government.

For the above reasons, I am of the opinion that the results of the census to which your request refers will not effect a change in the form of government of the City of Scottsboro.

In an opinion reported in the Quarterly Report of Attorney General, Vol. 81, p. 50, this office had before it a question similar to the one presented by your request. There, Act. No. 845, supra, was erroneously treated as an amendment to Title 37, Chapter 10, Article 3, Code of Alabama, 1940. Article 3, supra, consists of Sections 481-484 of said Title. It is obvious from that portion of Act. No. 845, supra, quoted hereinabove, that said Act No. 845, does not amend Article 3, supra.

Therefore, that portion of the opinion reported in Quarterly Report of Attorney General, Vol. 81, p. 50. supra, which pertains to a census taken within a municipality, is hereby overruled.

It is true that a census taken pursuant to Section 481, supra, may effect a change in the form of a municipal government. See Title 37, Section 483,

Code of Alabama 1940, as amended by Act No. 855, General and Local Acts 1953, p. 1146. The facts presented by your request render unnecessary a determination as to when such a change takes place. That question will be determined when presented.

Very truly yours,

JOHN PATTERSON
Attorney General

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